

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**JOINT STATUS REPORT OF MOVANT AMBAC ASSURANCE CORPORATION AND
RESPONDENTS THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR
PUERTO RICO, AS REPRESENTATIVE OF THE COMMONWEALTH OF PUERTO
RICO, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY
AUTHORITY WITH RESPECT TO THE RULE 2004 MOTIONS**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Movant Ambac Assurance Corporation (“Ambac”) and Respondents the Financial Oversight and Management Board for Puerto Rico (the “Board”), as representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the Board, the “Government Parties”),¹ respectfully submit this Joint Status Report in response to the Court orders dated January 23, 2020 (Dkt. No. 10332), February 6, 2020 (Dkt. No. 10727), June 24, 2020 (Dkt No. 13488), and July 20, 2020 (Dkt No. 13729).

I. PROCEDURAL BACKGROUND REGARDING AMBAC’S RULE 2004 REQUESTS

1. On October 28, 2019, Ambac filed *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (Dkt. No. 9022) (the “Assets Motion”), and *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis* (Dkt. No. 9023) (the “Cash Motion” and, together with the Assets Motion, the “Rule 2004 Motions”).

2. On November 8, 2019, the Government Parties filed the *Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Strike (A) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets [ECF No. 9022] and (B) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing*

¹ Ambac and the Government Parties are collectively referred to as the “Parties.”

Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis [ECF No. 9023] and for Sanctions (Dkt. No. 9131) (the “Motion to Strike”).

3. On January 23, 2020, Judge Swain issued a memorandum order denying the Motion to Strike (Dkt. No. 10332) (the “Memorandum Order”). The Memorandum Order directed the Parties to meet and confer by February 3, 2020 concerning the scope and mechanics of discovery responsive to the Rule 2004 Motions. *Id.* at 9.

4. Since the Memorandum Order was entered, the Parties have filed periodic status reports regarding their meet-and-confers. Most recently, on July 17, 2020, the Parties filed the *Joint Status Report of Movant Ambac Assurance Corporation and Respondents the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to the Rule 2004 Motions* (Dkt. No. 13723) (the “July 17 Joint Status Report”) that detailed their June 10 telephonic conference (the “June 10 Meet and Confer”), July 1, 2020 telephonic conference (the “July 1 Meet and Confer”), related communications, and agreed parameters for the resolution of disputed aspects of the Rule 2004 Motions. The Parties agreed in the July 17 Joint Status Report to file an updated Joint Status Report on September 1, 2020.

II. THE PARTIES’ PROGRESS SINCE THE PREVIOUS UPDATE TO THE COURT

5. Since the filing of the July 17 Joint Status Report, the Parties have continued to exchange correspondence² and meet and confer telephonically. Specifically, the Parties met and

² The Parties’ positions with regard to each of Ambac’s requests since the filing of the July 17 Joint Status Report is memorialized in the following correspondence: (i) Ambac’s email to the Government Parties dated July 30, 2020 (attached hereto as Exhibit A); (ii) AAFAF’s letter to Ambac dated August 6, 2020 (attached hereto as Exhibit B); (iii) Ambac’s letter to the Government Parties dated August 17, 2020 (attached hereto as Exhibit C); (iv) AAFAF’s letter to Ambac dated August 27, 2020 (attached hereto as Exhibit D); and (v) the Board’s letter to Ambac dated September 1, 2020 (attached hereto as Exhibit E).

conferred by telephone on August 7, 2020 (the “August 7 Meet and Confer”), August 28, 2020 (the “August 28 Meet and Confer”), and September 1, 2020 (the “September 1 Meet and Confer”).

The current state of the Parties’ negotiations regarding each pending request is as follows:

A. Status of Assets Requests (Directed Principally to AAFAF)

6. The Parties continue to negotiate in good faith regarding Ambac’s Prioritized Assets Requests.

7. AAFAF advised that it views its production related to the Commonwealth’s official inventory of real property assets to be complete, but it is continuing to investigate whether the Board or AAFAF requested that a comprehensive list of the Commonwealth’s (or its instrumentalities’) real property be developed. AAFAF also advised that it continues to work with instrumentalities to determine whether additional documents related to prioritized Commonwealth assets identified by Ambac are available, but reserves all rights to object to the collection of documents pertaining to properties not owned by the Commonwealth. AAFAF is considering Ambac’s request that it produce documents related to efforts to monetize unpaid *ad valorem* taxes owed to the Commonwealth.

8. On August 27, 2020, AAFAF produced documents related to a request for information requiring all Commonwealth entities to submit certain information concerning real property assets. AAFAF also produced resolutions related to transactions approved by the Real Property Valuation and Disposal Committee (the “Committee”), and a list of properties foreclosed upon by the Municipal Revenue Collection Center (“CRIM”). Ambac’s review and analysis of these documents remains ongoing, and AAFAF is addressing certain follow-up questions.

B. Status of Cash Requests (Directed Principally to the Board)

9. The Parties are continuing to negotiate in good faith regarding some of Ambac's Prioritized Cash Requests, but the Board and Ambac appear to have reached an impasse on at least one issue and may be close to an impasse regarding others, as described below.

i. Update Regarding Requests as to Which the Parties Continue to Make Progress.

10. The Board has stated that it has completed its production of factual source materials and raw data underlying the Duff & Phelps report and October 2, 2019 presentations, including its September 1, 2020 production of unredacted versions of factual source materials and raw data that were initially produced with redacted account numbers. The Board has also produced the "master database" from the Duff & Phelps report with all account numbers unredacted and a document identifying all accounts in Appendix J to the operative Disclosure Statement by account number. In addition, and in the interest of avoiding a dispute, the Board produced an "account tracker" prepared in connection with the October 2 presentations, which includes information regarding the Board's preliminary restriction determinations, as of the date of the October 2 presentation, on an account-by-account basis. Ambac's review and analysis of these documents remains ongoing.

ii. Update Regarding Request for Which the Parties Have Reached an Impasse.

11. The Parties appear to have reached an impasse with regard to Ambac's request for back-up materials containing calculations made to create the Duff & Phelps report and October 2, 2019 presentations, including Microsoft Excel or other dynamic versions of summary charts and tables contained in those reports showing the mathematical tabulations and calculations that were performed to generate the summary charts and tables presented therein. Although the Parties will refrain from addressing the substance of the dispute in this Joint Status Report, in brief, the Board

has objected to the requested discovery on relevance and privilege grounds; Ambac disagrees with the Board's objections and believes that the requested materials should be produced.

12. The Parties remain in discussion regarding Ambac's related request for "process documents" (reflecting the process or protocol for classifying certain accounts as restricted or unrestricted). The Board is considering certain requests by Ambac for such documents and informed Ambac that it will respond in writing as soon as practicable.

iii. Update Regarding Requests for Which the Parties May Be Nearing an Impasse.

13. In an effort to limit the need for formal discovery, Ambac proposed a stipulation (the "Stipulation") concerning the Commonwealth's essential public services and necessary operating expenses; the Board informed Ambac on July 17, 2020 that the Stipulation was "not workable." In light of this communication from the Board, on August 4, Ambac served Requests for Admission³ and Interrogatories⁴ on the Government Parties seeking to clarify the Government Parties' position on some of the issues raised in the Stipulation, while continuing to request the Board review and provide comments on the Stipulation.

14. The Government Parties indicated that they are amenable to responding to some of the Interrogatories (subject to certain objections that the Government Parties will articulate in their responses), but requested a two-week extension of their time to respond. Ambac consented today to the Government Parties' request for an extension, such that the responses are now due on

³ "Requests for Admission" refers to *Ambac Assurance Corporation's First Set of Requests for Admission to the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority Relating to Cash Rule 2004 Discovery* (Aug. 4, 2020) (attached hereto as Exhibit F).

⁴ "Interrogatories" refers to *Ambac Assurance Corporation's First Set of Interrogatories to the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority Relating to Cash Rule 2004 Discovery* (Aug. 4, 2020) (attached hereto as Exhibit G).

September 17, 2020. The Board noted that the Government Parties' responses to the Interrogatories may overlap with the subject matters at issue in the Stipulation.

15. Separately, the Government Parties informed Ambac yesterday that they consider the Requests for Admission procedurally improper under Rule 2004 and will not provide substantive responses to them. The Parties are continuing to discuss this issue. Ambac expressly reserves all rights regarding this dispute, and in light of the Government Parties' position, the Government Parties have not sought (and Ambac has not consented to) any extension of the time to respond to the Requests for Admission. The Government Parties will serve objections as to the Requests for Admission by the deadline of September 3, 2020.

16. The Board previously agreed to consider whether it will identify individual email custodians whose emails are relevant to Ambac's Prioritized Cash Requests. The Board advised Ambac earlier today that it is unwilling to identify the relevant individuals. The Parties are continuing to discuss this issue.

III. PROPOSED NEXT STEPS

17. As described above, although the Board and Ambac have reached an impasse regarding one request (for back-up materials containing calculations made to create the Duff & Phelps report and October 2, 2019 presentations), the Board and Ambac continue to discuss closely related requests for process documents. Additionally, Ambac has consented to the Government Parties' request for an extension of time to respond to the Interrogatories, but the Parties need to discuss other open issues such as the Government Parties' position that the Requests for Admission are improper.

18. In order to avoid duplicative and piecemeal briefing of discovery disputes, the Parties propose to continue to discuss Ambac's requests and to make progress on the remaining open issues, in the hopes that the Parties can narrow the range of issues that require judicial

intervention. While Ambac reserves its right to seek judicial relief as appropriate as to any requests as to which the Parties have reached an impasse, in light of the current status of the discussions, the Parties would propose to have another meet-and-confer by September 24, 2020, and to submit a further status report to the Court on September 30, 2020.

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Dated: September 1, 2020
San Juan, Puerto Rico

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CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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